

**DEPARTMENT OF THE TREASURY
FEDERAL LAW ENFORCEMENT TRAINING CENTER
GLYNCO, GEORGIA 31524**

FLETC DIRECTIVE (FD)

NUMBER: 67-71

Subject:

DATE: 07/06/83

Sunset Review:

FLETC ADMINISTRATIVE GRIEVANCE SYSTEM

1. PURPOSE. The purpose of this directive is to establish the grievance program and procedural requirements for employees to obtain consideration by management of dissatisfactions and concerns which affect them personally and which are subject to control by FLETC management.
2. SCOPE. This directive applies to all employees of the Center, regardless of the nature of their appointment. This coverage includes bargaining unit employees for those matters not covered by negotiated grievance procedures.
3. CANCELLATION. FLETC Directive No. 67-71, FLETC Grievance System, date July 30, 1979.
4. REFERENCE.
 - a. Title 5 C.F.R. Part 771
 - b. Federal Personnel Manual, Chapter 771
 - c. Treasury Personnel Management Manual, Chapter 771
5. DEFINITIONS.
 - a. Grievance. A request by an employee, or by a group of employees acting as individuals, for personal relief involving matters of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of FLETC management.
 - b. Personal Relief. A specific remedy directly benefitting the grievant(s) and may not include a request for disciplinary or other action affecting another employee.
 - c. Employee Representative. A person who has been designated by the grievant and who has agreed to advise, assist or to act for that employee in the presentation of a grievance.

d. Factfinding. The process by which a factfinder makes findings of facts, as requested by the deciding official, relating to the matter being grieved. A factfinder must be a person who has not been involved in the matter being grieved and who is not directly subordinate to an official who is involved in the grievance. Fact finding is appropriate only for relevant facts that are in dispute.

e. Resolution Official. The management official designated to issue the informal decision on the grievance. In most cases this will be the employee's immediate supervisor. However, in all cases, the informal grievance must be presented to the lowest level official with authority to grant appropriate relief.

f. Deciding Official. The management official designated to decide the formal grievance. The deciding official must be at a higher administrative level than any person involved in the subject of the grievance.

g. Days. Calendar days, unless stated otherwise. If, however, a time limit expires on a weekend, holiday, or other non-workday the time limit will be extended to the next workday.

h. Grievance File. A separate indexed file which must be established for all grievances and must contain all documents or materials related to the grievance.

i. Employee. A present or former employee of the Center, regardless of the nature of the employee's appointment, for whom a remedy can be provided, including bargaining unit employees for matters not covered by negotiated grievance procedures.

j. Bargaining Unit Employee. An employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations authority for which a labor organization has been granted exclusive recognition.

6. POLICY. It is the policy of the Center to afford employees ample opportunity to obtain consideration of their dissatisfaction with matters affecting them personally that are subject to management control.

7. RESPONSIBILITIES.

a. Supervisors. It is the responsibility of supervisors at all levels to receive and act promptly and fairly upon employee grievances and to make every possible effort to adjust grievances informally. They are expected to perform their personnel management duties in a manner which will promote a climate of confidence and teamwork among employees and which will assure employees of fair and responsible

consideration of their rights and concerns. Supervisors will be held accountable for compliance with, and proper implementation and administration of all controlling laws, rules, policies and regulations concerning grievances.

b. Employees. Each employee is expected to make a maximum effort to achieve informal settlement of their grievance. Employees should promptly bring any dissatisfactions to the attention of their supervisor. Employees are responsible for:

- (1) complying with appropriate time limits;
- (2) furnishing sufficient detail to clearly identify the matter being grieved and specific issues of concern; and
- (3) specifying the personal relief requested.

c. Personnel Officer. It is the responsibility of the Personnel Officer to coordinate employees' grievances. The Personnel Officer will serve as a central control point for the receipt of all documents or materials related to the grievance; will identify instances of dual consideration of issues; will take appropriate action to avoid such situations; and will ensure establishment of the grievance file. By no later than the fifteenth day of January, April, July, and October of each year, the Personnel Officer will forward to the Director of Personnel a copy of each final decision letter issued during the preceding quarter and a copy of the original grievance filed by the employee.

8. GRIEVANCE COVERAGE.

a. Actions Covered. Except as provided in paragraph (b) of this section, a covered grievance is any matter of concern, dissatisfaction or disciplinary action relating to the employment of a covered employee that is subject to the control of FLETC management.

b. Actions Not Covered. The FLETC Grievance System does not apply to:

- (1) the content of published Treasury Department or Center regulations and policy;
- (2) a decision which is appealable to the Merit Systems Protection Board (MSPB) or subject to final administrative review by the Office of Personnel Management (OPM) or the Equal Employment Opportunity Commission (EEOC) under law or regulations of the Office of the Commission; or matters administered by the General Accounting Office and the Office of Workers' Compensation Programs;

(3) nonselective for promotion from a group of properly ranked and certified candidates;

(4) a preliminary oral warning or notice of proposed adverse action, which, if effected, would itself be covered under the grievance system or excluded from coverage by (2);

(5) the return of a career appointee from Senior Executive Service (SES) to the General Schedule or another pay system during the one year period of probation or for less than fully successful executive performance under section 3592, title 5, U.S.C.;

(6) the reassignment of an SES appointee who has received an unsatisfactory rating under section 4314, title 5, U.S.C.;

(7) the termination of an SES career appointee during probation for unsatisfactory performance under subpart D of part 359, C.F.R.;

(8) a performance evaluation for an SES employee under subchapter II of chapter 43 of title 5, U.S.C.;

(9) the termination of a temporary promotion within a maximum period of two year which returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

(10) the termination of a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with section 335. 102(g), 5 C.F.R.;

(11) the substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of subchapter 1 of chapter 43 of title 5, U.S.C., Part 430 of 5 C.F.R. and TPMM chapter 430;

(12) the granting of or failure to grant an employee performance award or the adoption of or failure to adopt an employee suggestion or invention under sections 4503-4505, or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under section 4570 of title 5, U.S.C., which includes negative decisions as well as positive ones;

(13) the receipt of or failure to receive a performance award under section 5384 of title 5, or a quality salary increase under section 5336 of title 5, U.S.C., which includes negative decisions as well as positive ones;

(14) a merit pay determination or a merit pay increase or the lack of a merit pay increase under the Merit Pay System, or a decision on the granting of or failure to grant cash or honorary recognition under Chapter 54 of Title 5, U.S.C., and Part 540 of 5 C.F.R.

(15) the termination under Subpart H of Part 315 of 5 C.F.R. of a probationary employee for unsatisfactory performance;

(16) a separation action that is not appealable to MSPB or subject to final administrative review by OPM or EEOC, but this exclusion shall not apply to the separation of probationary employees for misconduct;

(17) the separation of a non-preference eligible in the excepted service;

(18) an action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee;

(19) any matter which is subject to a negotiated grievance procedure; and

(20) any action which is or has been the subject of an unfair labor practice charge.

9. FILING OF A GRIEVANCE.

a. Employee(s) in presenting a grievance under the Center's grievance system shall:

(1) be assured freedom from restraint, interference, coercion, discrimination or reprisal;

(2) have the right to be accompanied, represented and advised by a representative of their choice at any stage of the grievance procedure; and

(3) be assured a reasonable amount of official time if otherwise in an active duty status.

b. When an employee designates another employee of the Center as a representative, the representative, in presenting a grievance under the Center's grievance system shall:

(1) be assured freedom from restraint, interference, coercion, discrimination, or reprisal;

(2) be assured a reasonable amount of official time if otherwise in an active duty status; and

(3) be given a written designation signed by the grievant.

c. An employee in presenting a grievance, is entitled to communicate with and seek advice at any state of the grievance from:

(1) the Personnel Division; and/or

(2) the Equal Employment Opportunity Officer or Counselors designated under part 1613, 29 C.F.R.

d. Before presenting a formal grievance the employee must complete action under the informal grievance procedure except in the case of a grievance arising out of a suspension for 14 days or less. The present requirements for review, prior to effecting the suspension will be considered to be the equivalent of completion of the informal procedure and such grievance shall commence in accordance with the formal grievance procedure.

10 FILING OF GROUP GRIEVANCES. Employees may act as a group in submitting a grievance regarding a subject which affects all the members of the group, as if the group were an individual. All participants must be identified by name and signature, indicating their voluntary participation at each stage of the grievance and their agreement to accept the finality of the administrative decision ultimately rendered on the group grievance. At any given time, only one individual will be recognized as the group's representative. Each grievant will be advised in writing of the final decision of the group grievance.

11. ALLEGATIONS OF UNFAIR LABOR PRACTICES. When an allegation of an unfair labor practice is made in connection with, or directly related to, a grievance, the aggrieved party may seek redress under the grievance procedure or unfair labor practice complaint procedure, but not both procedures, either simultaneously or sequentially.

12. RELATIONSHIP BETWEEN EMPLOYEE GRIEVANCES AND OTHER GRIEVANCE AND APPEAL PROCEDURES.

a. The Office of Personnel Management has excluded from coverage of the administrative procedures any decision which is appealable to the Merit System

Protection Board, any decision subject to final administrative review by the Office of Personnel Management or the Equal Employment Opportunity Commission, and any matter administered by the General Accounting Office and the Office of Workers' Compensation Programs. These exclusions do not exclude from the administrative grievance procedures matters on which a complaint may be filed with the Special Counsel of MSPB. However, it is normally inappropriate to process an administrative grievance while an investigation by the Office of the Special Counsel is being conducted. Therefore, when an employee files a grievance in which the same issues are also being investigated by the Special Counsel, the grievance will be held in abeyance pending the outcome of the Special Counsel investigation. In order to avoid such instances of dual consideration, a copy of any grievance filed by a Center employee will be forwarded to the Personnel Officer for coordination and appropriate action.

b. For grievances filed under this system which contain, among other issues, allegations of discrimination the following procedures will be followed:

(1) An allegation of discrimination filled under this system shall be processed under 29 C.F.R. part 1613. Issues of discrimination are excluded from coverage by the administrative grievance system.

(2) If a portion of a grievance is covered by the administrative grievance system and another portion consists of allegations of discrimination, and if the resolution of the other aspects of the grievance cannot be separated from the issue of alleged discrimination, then action on the grievance will be stayed until the discrimination charge is adjudicated. If the issues can be separated, then the allegation of discrimination will be referred for processing under 29 C.F.R., part 1613, and the other aspects of the grievance will be processed expeditiously under the provisions of this directive.

(3) Similar, when a possible personnel irregularity is found in an EEO complaint and there is no finding of discrimination, the EEO complaint deciding official may refer the matter for processing under this procedure. If the matter is referred, appropriate action will be taken in accordance with the provisions of this directive.

c. Matters subject to negotiated grievance procedures are not covered by this directive.

13. GRIEVANT'S REPRESENTATIVE.

a. A person chosen by the grievant to serve as the grievant's representative must be one who is:

- (1) willing to serve, and
- (2) not disallowed because of priority needs of the Government, unreasonable costs to the Government, conflict of position, or conflict of interest.

b. An individual who chooses to act as a grievant's representative will be required to show a written designation signed by the grievant. If the grievant designates a labor or other organization to act as the representative, any individual named by the organization shall be recognized as the employee's representative, provided that the individual meets the requirements stated in a., above.

c. At any given time, only one individual may be recognized as the grievant's representative. The grievant is free to change the designation of representative at any time but must accept the responsibility for the consequences of any acts of commission or omission made by the designated representative.

d. In presenting a grievance or preparing a challenge to a disallowance decision, a representative who is employed by the Center shall be allowed a reasonable amount of official time. Supervisory approval for the use of official time must be obtained in advance.

14. DISALLOWANCE OF A GRIEVANT'S CHOICE OF REPRESENTATIVE.

- a. A grievant's choice of representative may be disallowed because of:
 - (1) priority needs of the Center;
 - (2) unreasonable cost;
 - (3) conflict of position; or
 - (4) conflict of interest.
- b. A disallowance decision may be made at any time during the processing of a grievance, but it may not be made retroactively. The Personnel Officer will be responsible for making disallowance decisions referring to information made by the grievant's supervisor, the deciding official, and/or the representative's supervisor. For example:
 - (1) if the representative's supervisor believes that release of the employee to serve would have a significant negative impact on the ability to meet program goals, to provide required services, or to meet project deadlines;

(2) if the grievant's choice of representative would involve travel costs or other related expenses for which the Center would be responsible;

(3) if there is a conflict of position, such as incompatibility between the representative's official duties and the representative's function; and

(4) if there is a conflict of interest, i.e., a supervisor or other employee who is excluded from membership in a bargaining unit to be represented by an official of a labor organization that represents or has pending a petition to represent employees under his/her direction or control or with whom he/she has substantial contact and dealings, or by an officer or employee of an association, federation, or council with which such a labor organization is affiliated.

c. The grievant and the representative will be informed in writing of the reason(s) for the decision and the procedure for challenging a disallowance.

d. If the grievant or representative challenges the disallowance decision, a written challenge must be presented to the Deputy Director within ten days. A final resolution of disagreement regarding the acceptance of a representative will be made within 15 days of receipt of the challenge of denial. Resolution of disagreements over the allowance of a representative must be resolved before a grievance may proceed.

e. The final decision regarding allowance of a representative is not grievable. The written decision disallowing a representative and all documents relating to an employee challenge of disallowance shall be included in the grievance file.

15. PRESENTING THE INFORMAL GRIEVANCE. The purpose of the informal procedure is to achieve resolution at the lowest possible level. An informal grievance must be filed with the lowest level supervisor with authority to grant appropriate relief. Normally, this is the immediate Supervisor over the employee. Under the informal procedure, an employee must present the grievance in writing on Form No. FTC-PMD-48 (10-82), Administrative Grievance Form, Attachment (1). An employee may present a grievance concerning a continuing practice or condition at any time. When a single act or occurrence is considered by the employee to be illustrative of a pattern of unfair or arbitrary conduct by management toward the employee, the employee may cite as many incidents as necessary to demonstrate the pattern but the most recent incident must be a grievant matter that occurred or was discovered within 15 days of the filing of the grievance.

16. MANDATORY USE OF INFORMAL PROCEDURE. An employee must complete action under the informal procedure before a grievance concerning the same matter will be accepted for processing under the formal procedure. (See paragraph 9d).

17. CONCLUSION OF INFORMAL PROCEDURE.

a. If the grievance is resolved through the informal procedures to the satisfaction of the employee, the matter is ended. A written statement of the resolution of the grievance must be given to the grievant by the supervisor. A memorandum will be provided to the Personnel Officer outlining the informal grievance and the relief granted with a copy of the statement given the grievant.

b. If the grievance cannot be resolved informally within 10 days, the employee will be so advised in writing. This notice will include:

(1) a statement to the effect the this notice constitutes the completion of the informal procedures;

(2) notification that a formal grievance, if any, must be received no later than 10 days from the employee's receipt of notice;

(3) identification of the deciding official to whom the form grievance is to be submitted; and

(4) advice on the contents of written statement to be used in presenting the formal grievance.

18. PRESENTING THE FORMAL GRIEVANCE.

a. An employee is entitled to present a grievance under the formal procedure if:

(1) action under the informal grievance procedure has been completed; and

(2) the grievance is presented within 10 days from receipt of the written answer under the informal procedure.

b. The formal grievance must be submitted as a written statement to the designated deciding official.

c. A formal grievance cannot address issues which were not raised at the informal stage.

19. INITIAL REVIEW OF A FORMAL GRIEVANCE.

a. The appropriate deciding official will promptly review the written grievance.

- b. The deciding official may reject the grievance if;
 - (1) the employee has not completed the informal procedure;
 - (2) it was not filed within the specified time limits for the formal procedure;
 - (3) it consists wholly of a matter or matters excluded from coverage under the grievance system;
 - (4) it fails to state the relief requested; or
 - (5) the employee fails to provide, upon request, sufficient detail to clearly identify the matter being grieved.

20. USE OF FACTFINDERS.

- a. The deciding official may use a factfinder when:
 - (1) there is conflicting evidence causing a dispute over facts; or
 - (2) when it is believed that a factfinder would be of assistance in reaching an equitable decision.
- b. If a factfinder is required one will be appointed by the Personnel Officer. A factfinder may be appointed at any time prior to issuance of a decision.
- c. The factfinder may:
 - (1) be a person subordinate to the deciding official;
 - (2) be a Treasury employee from another bureau or office;
 - (3) be a person who is not a Treasury employee;
 - (4) not be a person who is involved in the matter being grieved; or
 - (5) not be a person who is occupying a position subordinate to any official who is involved in the matter being grieved.
- d. The factfinder shall make and report a finding of facts without a recommendation for resolution of the grievance. However, this does not preclude an

individual deciding official from requesting, receiving, and considering a recommendation from the factfinder.

e. The deciding official may accept, reject or modify, in whole or in part, the factfinder's report of finding of facts. A deciding official is in no way bound or constrained by the factfinder's report.

21. FACTFINDING PROCEDURES.

a. A factfinder may acquire evidence through any one or any combination of the following means to be chosen solely at the factfinder's discretion:

- (1) the securing of documents;
- (2) personal interviews;
- (3) an informal group meeting; or
- (4) a formal hearing, which may be held when no other suitable means is available for the gathering of evidence.

b. The factfinder must include in the grievance file:

- (1) copies of documents the factfinder considers to be relevant;
- (2) written summaries, signed by the interviewees, of all interviews considered to be relevant;
- (3) a list showing the name of interviewees and date of interview for all interviews that are considered to have produced no relevant evidence;
- (4) a written summary of any group meeting signed by participants of the meeting; and
- (5) a written summary or verbatim transcript of any hearing.

c. Face-to-face interviews are generally preferable, but telephone interviews, written, signed statements, question-and answer memoranda and/or depositions may be used to save time and/or travel costs. When interviews are conducted by telephone, a signed summary must be obtained, by mail if necessary.

d. If an interviewee declines to sign a summary of interview, statement, memorandum, or deposition, the factfinder shall so note and indicate the reason given for refusal.

e. When a factfinder conducts a formal hearing the following rules will apply:

- (1) attendance is limited to person determined by the factfinder to have something to contribute to the factfinding process as principals, witnesses, representatives and their assistants, or recorder;
- (2) testimony shall be under oath or affirmation, administered by the factfinder:
- (3) decisions on the admissibility of testimony or evidence are made by the factfinder;
- (4) the factfinder shall permit cross-examination of witnesses; and
- (5) the factfinder may exclude any person for disorderly conduct during the hearing.

f. It is mandatory that the grievant and the management official who was responsible for or who took the action being grieved be given an opportunity to review and comment on the grievance file BEFORE a report of findings is made by the factfinder. The purpose of the review is to give the grievant and the appropriate management official an opportunity to suggest additional sources of evidence and to deny, refute, or otherwise challenge any evidence in the file. Any statement(s) made by the grievant and/or the appropriate management shall include in the file an acknowledgment of the grievant's and/or the appropriate management official's statement(s) and shall also include a listing of any additional evidence the factfinder obtained or sought after receiving this statement. If no further inquiry was made after receiving the statement(s), the factfinder shall include an explanation for this.

g. The factfinder shall submit to the deciding official a written report of findings which shall consist of the following:

- (1) a brief statement of the facts in dispute;
- (2) a description of the opposing points of view;
- (3) A discussion of the evidence; and
- (4) the conclusions regarding the facts.

h. The factfinder shall also furnish information copies of the report of findings to the grievant and the grievant's representative.

- i. A copy of the report of findings will be included in the grievance file.

22. FORMAL GRIEVANCE DECISION.

a. The deciding official is responsible for making a final decision on the grievance that is supported by the facts.

b. The grievance decision should be issued within 20 days after all the relevant and available facts have been established to the satisfaction of the deciding official. The deciding official may direct that additional factfinding be conducted if it is determined that an initial report of factfinding is insufficient or inadequate. If the deciding official determines that further inquiry is necessary after receiving the factfinder's report of findings, the grievant shall be informed of that determination, the type of inquiry that is to be made, and the approximate date the decision will be issued.

- c. The decision shall consist of the following parts:

- (1) a statement of the issues, including a description of all the matters that the grievant alleges to have been unfair and the personal relief requested;

- (2) a statement of the facts relevant to the issue(s) identifying those that are not in dispute and those that are in dispute;

- (3) a report of findings for any relevant facts that were in dispute, if any:

- (a) if the deciding official used a factfinder and accepts the factfinder's report, it shall be included by reference; and

- (b) if the deciding official rejected the factfinder's factual conclusions wholly or in part, the report of findings shall refer to the report and shall state the different conclusions adopted by the deciding official and the reasons for the differences.

- (4) a discussion of the issues in light of the facts, including any written agency regulations or policy; and

- (5) a conclusion that specifically states whether the grievant has suffered wrongful harm and what personal relief, if any, is to be granted.

- d. The grievance decision shall be mailed or delivered to the grievant and to the appropriate management official who was responsible for or who took the action

being gravitate. If the grievant use a representative, the decision will be mailed to delivered to the grievant's representative with a copy for the grievant. A copy will also be included in the grievance file which is maintained in the Personnel Division.

e. The decision by the deciding official will be considered final and binding on all parties. The decision is not subject to any further review, as the Office of Personnel Management does not review grievance decisions made under agency grievance systems.

23. TIMELY PROCESSING. High priority efforts must be made to resolve each grievance as soon as possible. It is expected that the formal grievance decision will be issued as expeditiously as possible normally within 90 days after the deciding official first receives the formal grievance. When that time frame cannot be met, the deciding official must advise the grievant in writing of the expected date the decision will be issues.

24. CANCELLATION OF A GRIEVANCE.

a. A grievance shall be canceled:

- (1) at the employee's request;
- (2) upon termination of the employee's employment with the Center unless the personal relief sought by the employee may be granted after termination of employment
- (3) upon the death of the employee unless the grievance involves a question of pay; or
- (4) for failure to prosecute if the employee does not furnish required information and duly proceed with the advancement of the grievance.

b. A copy of the notice of cancellation shall be included in the grievance file.

25. GRIEVANCE FILE.

a. Informal Grievance. The immediate supervisor of the grievant will provide the Personnel Officer a copy of the grievance and the relief granted or a copy of the statement of completion of the informal procedure.

b. Formal Grievance. A complete file of all material contained in the formal grievance will be maintained in the Personnel Division. The deciding official will provide the Personnel Officer a copy of all material including the factfinder's report and the final decision.

26. AVAILABILITY FOR INSPECTION. Copies of the Federal Personnel Manual, chapter 771; Treasury Personnel management manual, (TPMM), chapter 771; and this directive will be available in the Personnel Division on a continuing basis to employees and/or their representatives. Any information contained in Treasury Personnel Management Manual, chapter 771, not specifically addressed in this directive, is applicable

27. OFFICE OF PRIMARY INTEREST. Personnel Division, Office of resource Management.

Charles F. Rinkevich
Director

Attachment - available from the Personnel Division